

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 10-0113

ROBERT JAMES THOMAS,

Petitioner,

v.

MIKE FERRITER, Director of Montana
Department of Corrections; and
DAVE ARMSTRONG, Director of Alternatives
Inc., Alpha Pre-release,

Respondents.

FILED

MAY 14 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**ATTORNEY GENERAL'S RESPONSE TO PETITION FOR
A WRIT OF HABEAS CORPUS**

In compliance with this Court's order of April 6, 2010, the Attorney General's Office responds to the petition for the writ of habeas corpus filed by Robert James Thomas. Thomas contends that he is entitled to additional credit for jail time. Pertinently, Thomas also claims that he is entitled to credit for street or supervision time.

BACKGROUND

As discussed in Thomas's petition, the district court, Judge Larson presiding, initially deferred imposition of sentence for a period of three years after Thomas pled guilty to multiple offenses, including Felony Criminal

Endangerment. (D.C. Doc. 23, 7/14/04 Judgment, attached as Exhibit A.) In August 2005, however, the revocation court revoked its earlier deferral and committed Thomas to the Department of Corrections (DOC) for five years, suspended. The court gave Thomas credit for street time through January 23, 2005. (D.C. Doc. 42, August 31, 2005 Judgment at 2, 5:10, 6:5-7, attached as Exhibit B.) As a result of Thomas's continuing violations, on May 19, 2006, the district court revoked its August 2005 suspended sentence and committed Thomas to the DOC for five years. Judge Larson determined that because of Thomas's failure to comply with terms and conditions of his suspended sentence "he is not entitled to receive, and shall not receive, credit for any elapsed time between the date of his conviction and the date of this Order, except that he shall receive credit for one hundred forty-eight (148) days jail time which he has previously served from November 16, 2005 through April 13, 2006." (D.C. Doc. 65, 5/19/06 Judgment at 2:21-26, attached as Exhibit C.)

Thomas is currently residing at the Billings Pre Release Center.
(Correctional Offender Information Sheet, attached as Ex. D.)

CONCESSION

Following discussions with the Missoula County Attorney's Office, legal counsel for the DOC, and Thomas himself, the Attorney General's Office

concedes that Thomas's petition should be granted with respect to Thomas's claim for street time. In August 2005, Thomas was given credit for street time from July 14, 2004 through January 23, 2005 (193 days). Without credit for street time, Thomas will discharge his sentence on November 14, 2010. (DOC Spreadsheet, attached as Exhibit E.) With credit for street time, Thomas is entitled to release.

This Court should issue an order granting the petition with respect to street time and ordering Thomas's release, or, alternatively, the Court should remand to the revocation court, Judge Larson presiding, with instructions to amend the judgment to grant Thomas credit for street time from July 14, 2004 through January 23, 2005. Following receipt of this Court's order or an amended judgment from the district court, the DOC will recalculate Thomas's discharge date to effectuate Thomas's discharge and release.

Respectfully submitted this 14th day of May, 2010.

STEVE BULLOCK
Montana Attorney General
Justice Building
P.O. Box 201401
Helena, MT 59620-1401

By: Mark Mattioli
MARK W. MATTIOLI
Appellate Services Bureau Chief

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing
Response to Petition for Writ of Habeas Corpus to be mailed to:

Mr. Robert James Thomas
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Alternatives, Inc. Alpha House
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Billings, MT 59101

Mr. Steve Barry
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1539 Eleventh Avenue
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Ms. Jennifer Clark
Deputy County Attorney
200 West Broadway
Missoula, MT 59802

DATED: _____

5/14/10 Mark Matthews

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 14 of the Montana Rules of Appellate Procedure, I certify that this response to writ is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 5,000 words, excluding certificate of service and certificate of compliance.



MARK W. MATTIOLI

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APPENDIX

D.C. Doc. 23, 7/14/04 Judgment	Exhibit A
D.C. Doc. 42, 8/31/05 Judgment	Exhibit B
D.C. Doc. 65, 5/19/06 Judgment	Exhibit C
Correctional Offender Information Sheet.....	Exhibit D
DOC Spreadsheet.....	Exhibit E